IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
June 26, 2006 Session

DAIMLERCHRYLSER CORPORATION v. RUTH E. JOHNSON, COMMISSIONER

Appeal from the Chancery Court for Davidson County
No. 02-378-I Claudia Bonnyman, Chancellor

No. M2005-00734-COA-R3-CV - Filed on April 24, 2007

Trial court found automobile manufacturer was not a "motor vehicle dealer" under Tenn. Code Ann. § 67-6-510(b) and was, therefore, not entitled to a trade-in credit for sales and use tax. We affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Patricia Head Moskal, Joseph W. Gibbs, Nashville, Tennessee; Maryann B. Gall, Columbus, Ohio, for the appellant, DaimlerChrysler Corporation.

Paul G. Summers, Attorney General and Reporter; Wyla M. Posey, Assistant Attorney General, for the appellee, Ruth E. Johnson, Commissioner of Revenue, State of Tennessee.

OPINION

The parties agree that the sole issue in this appeal is whether the trade-in credit of Tenn. Code Ann. § 67-6-510(b) is applicable to calculate the amount of use tax owed by vehicle manufacturer DaimlerChrysler on replacement vehicles used for business purposes. This trade-in credit reduces the amount of tax owed on the replacement vehicles. If the statutory trade-in credit is applicable, when DaimlerChrysler rotates out of service a car it had been using for business purposes, then the value of the out-of-service vehicle will be used to reduce the purchase price of the replacement vehicle, and the use tax is paid on the difference between the two vehicles rather than the original full purchase price of the replacement vehicle.

DaimlerChrysler is a manufacturer of automobiles, trucks, vans and sport utility vehicles. After auditing DaimlerChrysler's sales and use tax returns for the years 1994 through 2000 ("Audit Period"), the Commissioner of Revenue issued a notice of assessment on September 2, 2000 ("First

Assessment") and a second notice of assessment on September 21, 2001 ("Second Assessment"). DaimlerChrysler paid the portions of the assessments which were not in dispute.

The portions of the Commissioner's assessment disputed by DaimlerChrysler relate to the Commissioner's refusal to allow DaimlerChrysler credits under Tenn. Code Ann. §67-6-501(b)(1) for the rotation of cars used by DaimlerChrysler for business purposes. DaimlerChrysler filed suit in February of 2002 under the Taxpayer Remedies for Disputed Taxes Act, Tenn. Code Ann. § 67-1-1801 *et seq.*, asking the court to invalidate and set aside portions of the First Assessment. DaimlerChrysler later amended the complaint to likewise contest portions of the Second Assessment relating to the credits.

The parties filed cross motions for summary judgment on the sole issue whether DaimlerChrysler was entitled to "trade-in credits" for vehicles it rotated for business use under Tenn. Code Ann. § 67-6-510(b). The trial court found DaimlerChrysler was not entitled to the statutory credit, resulting in this appeal.

I. FACTS

The parties were able to agree that the sole issue on appeal is the applicability of the trade-in credit of Tenn. Code Ann. § 67-6-510(b). The parties also agreed to the following facts for purposes of their cross-motions for summary judgment.

DaimlerChrysler is a manufacturer of motor vehicles licensed by the Tennessee Motor Vehicle Commission as a vehicle manufacturer/distributor. During the seven year Audit Period, DaimlerChrysler had a zone office and a distribution center in Memphis, Tennessee. DaimlerChrysler also leased diagnostic equipment and signs to its dealers. For one of those years, DaimlerChrysler also owned 100% of the equity stock in two retail dealerships in Memphis.

The DaimlerChrysler activities pertinent to this case relate to the sales and promotional activities conducted by its zone office. Representatives from DaimlerChrysler visit dealerships and potential fleet customers to demonstrate and promote the sale of Chrysler vehicles. To assist its employees in these particular activities, DaimlerChrysler removed new Chrysler vehicles from its inventory at various assembly plants and assigned them for use by the zone office employees. After about twelve months of use, the vehicles were returned to inventory and sold at auction. Generally, new Chrysler vehicles were then rotated in to replace the returned vehicles.

While the vehicles were in use by the zone office, they were owned by DaimlerChrysler and each vehicle had a Manufacturer's Certificate of Origin ("MCO"). The MCO evidences the initial ownership by DaimlerChrysler of a new vehicle. These MCOs were issued by DaimlerChrysler at the assembly plants and were sent with the vehicles to the zone office. While in use the vehicles were issued manufacturer's special purpose license plates since DaimlerChrysler was registered as a manufacturer with the Shelby County, Tennessee Clerk. These plates bore a dealer designation.

When the vehicles were returned to inventory, the MCOs were stamped "USED" and the vehicles were then sold at auction to dealers.

The trial court found DaimlerChrysler was not entitled to the credit based on two independent grounds. First, DaimlerChrysler was not a "motor vehicle dealer" within the meaning of Tenn. Code Ann. § 67-5-510(b). Second, in order to utilize the credit, the trial court found Tenn. Code Ann. § 67-5-510(b) required that DaimlerChrysler pay sales or use tax on the vehicles it wishes to value as trade-ins at the time the trade-ins were made. Since DaimlerChrysler failed to make these payments at the time of the trade-in, then it failed to meet the statutory requirement and was thus not entitled to the credit.

II. THE CREDIT AT ISSUE

Tenn. Code Ann. § 67-6-510 provides as follows:

> (a) Where used articles are taken in trade, or in a series of trades, as a credit or part payment on the *sale* of new or used articles, the tax levied by this chapter shall be paid on the net difference, that is, the price of the new or used article *sold* less the credit for the used article taken in trade.
>
> (b) (i) A *motor vehicle dealer* having previously titled and registered a motor vehicle in the dealership name for business use, and *having paid the appropriate sales or use tax on such vehicle*, shall be allowed a trade-in credit equal to the trade-in value of such vehicle against the purchase price of a new or used vehicle purchased or extracted from such a dealer's inventory to be titled and registered as a replacement vehicle for business use, and the sales or use tax shall be paid on the net difference.
>
> (ii) The trade-in value authorized by this subsection (b) shall be equal to the trade-in amount for the specific make and model as established by the NADA Official Used Car Guide, Southeastern Edition.
>
> (iii) It is the legislative intent that a *dealer* may purchase a vehicle from the *dealer's dealership's inventory* and receive the same trade-in credit as if the dealer purchased the vehicle *from the inventory of another dealer*.

(emphasis added).

Neither party takes the position that subsection (a) has any applicability in this matter. As explained by the trial court, subsection (a) applies only when two entities are conducting a transaction "since the Department has consistently taken the position that a taxpayer may not sell to itself since there is no consideration in that transaction." Therefore subsection (a) does not apply to any transaction where there an entity seeks a trade-in credit against the "purchase" of its own inventory. In addition, subsection (a) appears to apply only to sales and would have no applicability

to the current situation since the issue is whether DaimlerChrysler may get a credit on "use" as opposed to sales taxes.

Subsection (b) was added in 1995 to allow a trade-in credit against a purchase from a motor vehicle dealer's own inventory. The express legislative intent is to allow a car dealership the same trade-in credit as allowed under subsection (a), *i.e.*, as though the trade was between two entitles. Tenn. Code Ann. § 67-6-510(b)(iii). Under subsection (b), tax is paid on the difference between the value of the vehicle that is retired from service and the price of the replacement vehicle. The reduction in tax is on the purchase of the second vehicle, not the vehicle traded in. The trade-in credit in effect reduces the value of the replacement vehicle for sales and use tax purposes.

The issue is whether vehicle manufacturers may claim the trade-in credit of Tenn. Code Ann. § 67-6-510(b). The Department argues alternatively that, even if the credit is available to manufacturers, DaimlerChrysler may not avail itself of the credit since it failed to meet the statutory requirement of having already paid tax on the vehicle "traded in."

III. IS DAIMLERCHRYSLER A "MOTOR VEHICLE DEALER"?

According to DaimlerChrysler, a manufacturer is included under the definition of "motor vehicle dealer" for two reasons. First, DaimlerChrysler reasons that the natural and ordinary meaning of "motor vehicle dealer" includes one who deals in motor vehicles. Second, DaimlerChrysler argues that it fits the definition of "dealer" found in the statutory scheme at issue.

The trade-in credit statute at issue is part of the Retail Sales Tax Act, Tenn. Code Ann. § 67-6-101 *et seq*. Definitions are provided in Tenn. Code Ann. § 67-6-102 that are to be used in Chapter 6 "unless the context otherwise requires." "Motor vehicle dealer" is not defined. DaimlerChrysler, however, argues it meets several of the definitions of "Dealer" found in Tenn. Code Ann. § 67-6-102(12). One such definition relied on by DaimlerChrysler defines "dealer" as one who "[m]anufacturers or produces tangible personal property for sale or use in Tennessee." Tenn. Code Ann. § 67-6-102(12)(A). DaimlerChrysler argues that as a wholesale dealer it is entitled to the same treatment as retail dealers. The argument put forth by DaimlerChrysler regarding the logic of applying Tenn. Code Ann. § 67-6-510(b) to manufacturers as well as retail dealers is well constructed and quite persuasive.

However, whether or not the trade-in credit ought to apply to manufacturers is not the question before us. The question is purely one of statutory construction, with well recognized principles guiding our analysis. The primary rule of statutory construction is "to ascertain and give effect to the intention and purpose of the legislature." *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000) Courts must do so without unduly restricting or expanding a statute beyond its intended scope. *In re C.K.G.*, 173 S.W.3d 714, 721-22 (Tenn. 2005). To determine legislative intent, one must look to the natural and ordinary meaning of the language used in the statute itself. We must examine any provision within the context of the entire statute and in light of its over-arching purpose and the goals it serves. *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn.2000);

Cohen v. Cohen, 937 S.W.2d 823, 828 (Tenn. 1996); *T.R. Mills Contractors, Inc. v. WRH Enterprises,* LLC, 93 S.W.3d 861, 867 (Tenn. Ct. App. 2002). The statute should be read "without any forced or subtle construction which would extend or limit its meaning." *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn.1991). Statutes relating to the same subject matter or having a common purpose are to be construed together. *In re C.K.G.*, 173 S.W.3d at 722.

As our Supreme Court has said, "[w]e must seek a reasonable construction in light of the purposes, objectives, and spirit of the statute based on good sound reasoning." *Scott v. Ashland Healthcare Center, Inc.*, 49 S.W.3d 281, 286 (Tenn. 2001), citing *State v. Turner*, 913 S.W.2d 158, 160 (Tenn. 1995). Courts must look to a statute's language, subject matter, objective or purpose, and the wrong it seeks to remedy or prevent. *In re C.K.G.*, 173 S.W.3d at 722. Courts are also instructed to "give effect to every word, phrase, clause and sentence of the act in order to carry out the legislative intent." *Tidwell v. Collins*, 522 S.W.2d 674, 676-77 (Tenn.1975); *In re Estate of Dobbins*, 987 S.W.2d 30, 34 (Tenn. Ct. App. 1998). Courts must presume that the General Assembly selected these words deliberately, *Tenn. Manufactured Housing Ass'n. v. Metropolitan Gov't*., 798 S.W.2d 254, 257 (Tenn. App.1990), and that the use of these words conveys some intent and carries meaning and purpose. *State v. Levandowski*, 955 S.W.2d 603, 606 (Tenn. 1997); *Tennessee Growers, Inc. v. King,* 682 S.W.2d 203, 205 (Tenn.1984).

With regard to interpreting tax statutes, this Court has set forth the following:

> We begin our analysis of these issues with the well-established rule that courts must construe tax statutes liberally in favor of the taxpayer and, conversely, strictly against the taxing authority. *See White v. Roden Elec. Supply Co.*, 536 S.W.2d 346, 348 (Tenn. 1976); *Memphis St. Ry. v. Crenshaw*, 165 Tenn. 536, 55 S.W.2d 758, 759 (Tenn. 1933). Where any doubt exists as to the meaning of a taxing statute, courts must resolve this doubt in favor of the taxpayer. *See Memphis Peabody Corp. v. MacFarland*, 211 Tenn. 384, 365 S.W.2d 40, 42 (1963); *accord Carl Clear Coal Corp. v. Huddleston*, 850 S.W.2d 140, 147 (Tenn.Ct.App.1992). Courts may not extend by implication the right to collect a tax "beyond the clear import of the statute by which it is levied." *Boggs v. Crenshaw*, 157 Tenn. 261, 7 S.W.2d 994, 995 (1928). By the same token, courts must give effect to the "plain import of the language of the act" and must not use the strict construction rule to thwart "the legislative intent to tax." *International Harvester Co. v. Carr*, 225 Tenn. 244, 466 S.W.2d 207, 214 (1971); *see also Bergeda v. State*, 179 Tenn. 460, 167 S.W.2d 338, 340 (1943) (indicating that courts "must give full scope to the legislative intent and apply a rule of construction that will not defeat the plain purposes of the act").

Saturn Corp. v. Johnson, 197 S.W.3d 273, 276 (Tenn. Ct. App. 2006) *quoting*, *American Airlines, Inc. v. Johnson*, 56 S.W.3d 502, 504 (Tenn. Ct. App. 2000).

If there exists no ambiguity, then legislative history cannot change or detract from the clear meaning of the statute. *Saturn*, 197 S.W.3d at 277; *see also A.T.S. Southeast, Inc. v. Carrier Corp.*,

18 S.W.3d 626 (Tenn. 2000). When the plain language of the statute is capable of conveying more than one meaning, then the legislative history may be examined to determine the intent of the legislature. *Harvester Co. v. Carr*, 225 Tenn. 244, 466 S.W.2d 207, 214 (1971); *Saturn*, 197 S.W.3d at 277.

The legislature clearly intended the definitions of Tenn. Code Ann. § 67-6-102 to apply to the trade-in credit statute "unless the context otherwise requires." Under those definitions, a manufacturer is included within the definition of dealer. However, the legislature has expressly stated its intent with regard to the trade-in tax credit, and that expression leads to the inescapable conclusion that "the context otherwise requires" and, consequently, manufactures are not "motor vehicle dealers" within the meaning of the trade-in statute.

The legislative intent is expressed in Tenn. Code Ann. § 67-6-510(b)(iii) as "it is the legislative intent that a dealer may purchase a vehicle from the dealer's *dealership* inventory" and receive the credit. Maintenance of a dealership by a manufacturer is, however, expressly prohibited by state law subject to limited exceptions. Tenn. Code Ann. § 55-17-114(c)(17). A registered manufacturer who sold vehicles to anyone except "motor vehicle dealers" is subject to license revocation.[1] Tenn. Code Ann. § 55-17-114(c)(19). Since a manufacturer cannot have a dealership, then the context of Tenn. Code Ann. § 67-6-510(b) clearly excludes manufacturers.

Since we do not find the statute to be ambiguous or capable of two different meanings, we do not find it necessary to examine the legislative history of the statute.[2]

IV. FAILURE TO PREVIOUSLY PAY TAX ON VEHICLE

As an alternative ground for its holding, the trial court found that even if DaimlerChrysler were a motor vehicle dealer within the meaning of Tenn. Code Ann. § 55-6-510(b), DaimlerChrysler was nevertheless not entitled to the credit. The trial court found that since DaimlerChrysler had not paid a sales or use tax on the vehicle being replaced at or before the time the trade-ins occurred, then DaimlerChrysler could not take advantage of the credit. DaimlerChrysler concedes that it paid no sales or use tax on the vehicles being replaced at or before the time of the trade-in. DaimlerChrysler argues that the statue does not require timely payment of the sales and use tax to be a prerequisite to getting the credit.

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[1] Sale by auction is an exception to this rule. Tenn. Code Ann. §§ 55-17-102(2)(A); 55-17-114(c)(19).

[2] The trial court relied in part on the statute's legislative history and found that the legislative history supported the conclusion that manufacturers were not intended to receive the trade-in credit. No contrary history has been cited to us.

The statute is clear that in order to get a credit for the value of the vehicle being retired, a trade-in credit will be allowed after "having paid the appropriate sales and use tax" on the retired vehicle. The statute ties the payment of the tax to when the vehicle was "previously titled and registered." The event would generally, in the context of a dealership, occur when the car was taken out of inventory to be used for the dealer's business purposes. There is no dispute DaimlerChrysler failed to make this payment. As such, it is not entitled to the credit of Tenn. Code Ann. § 55-6-510(b) even if it were a "motor vehicle dealer."

IV.

We affirm the judgment of the trial court. Costs on appeal are taxed to the appellant, DaimlerChrysler Corporation.

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PATRICIA J. COTTRELL, JUDGE